FILED BY CLERK
MAR 25 2010
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FRANCES A., Appellant, v. ARIZONA DEPARTMENT OF ECONOMIC SECURITY, PASCUA YAQUI TRIBE, and VICTORIA R., Appellees.	2 CA-JV 2009-0126 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 15714700

Honorable Joan L. Wagener, Judge Pro Tempore

AFFIRMED

Frances A. Adames
Tolleson
In Propria Persona

Terry Goddard, Arizona Attorney General
By Pennie J. Wamboldt
Prescott
Attorneys for Appellee Arizona
Department of Economic Security

Pascua Yaqui Tribe, Office of the Attorney General
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Pascua Yaqui Tribe

K E L L Y, Judge.

¶1 Frances A. is the maternal grandmother of Victoria R., born in December 2008. Arguing on her own behalf, Frances appeals from the juvenile court's October 2009 order denying her motion to intervene in the dependency proceeding for Victoria, which resulted in the termination of the parental rights of Victoria's parents, Catherine R. and Joseph R. We will not disturb the juvenile court's order denying a motion to intervene absent an abuse of discretion. *Allen v. Chon-Lopez*, 214 Ariz. 361, ¶ 9, 153 P.3d 382, 385 (App. 2007). Finding no such abuse, we affirm.

¶2 Victoria is the eleventh child born to Catherine. Although it is unclear from the record whether Richard is the father of all of Catherine's children, it is undisputed that he is Victoria's father and that none of the children remain in their parents' care.[1] At the time of Victoria's birth, Catherine tested positive for cocaine, a drug she admitted having used throughout the pregnancy. Victoria was born prematurely and placed in the custody of the Arizona Department of Economic Security (ADES) upon her discharge from the hospital in January 2009. ADES then filed a dependency petition as to Victoria. The parents admitted the allegations in the petition, and the juvenile court adjudicated Victoria dependent in February 2009. Victoria is an "Indian child," as defined in the Indian Child Welfare Act of 1978 (ICWA), 25 U.S.C. §§ 1901 through 1963. The

[1]Frances has adopted six of Catherine's children and, although it is not clear from the record, it appears she also has permanent guardianship of three others.

juvenile court granted the Pascua Yaqui Tribe's (the Tribe) motion to intervene, which had been filed along with its specific placement preferences made pursuant to 25 U.S.C. § 1915(c).

¶3 Since her discharge from the hospital, Victoria has lived with A. in A.'s licensed foster care home on the Pascua Yaqui Reservation, an ICWA-compliant placement. A., who is willing to adopt Victoria, lives near the family who adopted Victoria's sister, born in 2007. Frances attended the April 6, 2009, permanency planning hearing, at which the juvenile court changed the case plan goal from family reunification to severance and adoption and ordered ADES to file a motion to terminate the parents' rights to Victoria. It did so three days later. On the date of the permanency planning hearing, Frances filed a request for appointment of counsel to represent her in the proceeding. The juvenile court denied her request and she apparently hired counsel sometime thereafter.

¶4 A contested severance hearing took place in June, July and September 2009, and the juvenile court ultimately terminated the parents' rights to Victoria in November 2009 on the grounds of abandonment, neglect or abuse, and prior severance. *See* A.R.S. § 8-533(B)(1), (B)(2), and (B)(10). Frances attended the first day of the severance hearing in June and testified on the final day in September. On September 21, 2009, just a few days before the severance hearing ended, Frances's attorney filed a motion to intervene in which he asserted the motion was timely because Frances had not

been informed of Victoria's removal from her parents' custody and had not learned about the dependency proceeding until "recently."

¶5 Relying on *Bechtel v. Rose*, 150 Ariz. 68, 72, 722 P.2d 236, 240 (1986), in which our supreme court held that, *if* any condition for intervention exists, the court should then consider certain factors to determine whether a grandparent's petition to intervene in the grandchild's dependency proceeding should be granted, Frances argued her motion should be granted because she had an interest in Victoria's welfare. Frances raised her motion pursuant to Rule 24(b)(2), Ariz. R. Civ. P.,[2] the permissive intervention statute, which has been held to apply in juvenile cases. *See William Z. v. Ariz. Dep't of Econ. Sec.*, 192 Ariz. 385, ¶ 7, 965 P.2d 1224, 1226 (App. 1998); *see also* Ariz. R. P. Juv. Ct. 37(A) (incorporating Ariz. R. Civ. P. 24). ADES and the Tribe opposed Frances's motion. The juvenile court heard and denied the motion on October 22, 2009.

[2]The rule contains the following relevant provisions:

> Upon timely application anyone may be permitted to intervene in an action:
>
> . . . .
>
> 2. When an applicant's claim or defense and main action have a question of law or fact in common.
>
> In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

¶6 At the hearing on the motion to intervene, Frances's attorney asserted that the motion was not only proper under *Bechtel*, 150 Ariz. at 72, 722 P.2d at 240, but that it also was timely because the severance was still pending, and intervention would not unduly delay permanency for Victoria, who could remain with A. while the court considered placement with Frances. Counsel further asserted that Frances had moved to intervene "as fast as she could," particularly in light of the court's denial of her request for an attorney in April 2009. Counsel additionally argued that placing Victoria with Frances was in Victoria's best interests because so many of her siblings already lived with Frances, who understood the "eccentricities" of the family. Catherine and Joseph supported Frances's motion.

¶7 ADES argued the motion was untimely and asserted that, although Frances had attended the permanency hearing on April 6, she had not filed the motion to intervene until September 21, five months after she had learned the case plan had been changed to severance and adoption, and just days before the completion of the severance hearing. ADES also noted that, because of Frances's involvement in numerous other dependencies with the family, she "was not someone who is unfamiliar with the court process. . . . She has been thoroughly involved with the dependency proceedings [of the other children]. So she knows how it works." ADES further asserted that considering Frances as a placement at that point in the proceedings would delay Victoria's adoption. ADES also noted that Victoria had no relationship with Frances, as she had "spent pretty much her entire life in the care of her current placement." ADES informed the court that A. had

indicated her willingness to ensure that Victoria would maintain contact with all of her siblings. Counsel for Victoria agreed with ADES that granting Frances's motion would have a "harmful effect" on Victoria.

¶8 The juvenile court accurately summarized Frances's argument that, as the grandmother, she believed she was entitled to a presumptive right to intervene and that "she shares a common interest of law and fact with the present proceeding." The court then ruled as follows:

> I know that the agency, minor's counsel and the Pascua Yaqui Tribe all argue that the applicant, the maternal grandmother . . . has not met the threshold criteria pursuant to Rule 24(B) and their argument is that the application is untimely . . . . And the Court agrees that her application is an untimely application. This child has been in care for over ten months now and that the Agency actually had worked with this family for approximately a month prior to the child coming into care because the child remained in the hospital for approximately six weeks while the Agency worked with the parents or attempted to engage the parents in services and work with the family, that began back in December.
>
> The child was officially taken into temporary custody . . . on January 19, 2009, that's ten months and a few days beyond that . . . ten month period of time. Since the child was released from the hospital, she has been placed with the current placement.
>
> The Court believes that the grandmother's application, while it is well-meaning and I don't believe she intended it to delay or prejudice these proceedings, I think that the end result would be that if the Court allowed her to intervene it would do that. So the Court's [going to] deny the motion to intervene at this time . . . .

¶9 On appeal, Frances argues the court's ruling was an abuse of discretion.[3] To the extent Frances also argues the court should have considered whether the ultimate decision regarding placement is governed by the Tribe's placement preferences under ICWA as opposed to those set forth in A.R.S. § 8-514(B), that issue is not properly before us on appeal, and we do not address it. *See Allen*, 214 Ariz. 361, ¶ 13, 153 P.3d at 386 (proper inquiry under *Bechtel* focuses not on eventual outcome of proceeding, but on effect intervention may have on proceeding).

¶10 Rather, the sole issue on appeal is whether the juvenile court abused its discretion when it denied the motion to intervene. "When determining whether permissive intervention should be granted, the trial court must first decide whether the statutory conditions promulgated in Rule 24(b)(1) or 24(b)(2) have been satisfied." *Bechtel*, 150 Ariz. at 72, 722 P.2d at 240. Rule 24(b) expressly requires that the party requesting intervention do so in a *timely* manner. We review the court's decision on the timeliness of a motion to intervene for a clear abuse of discretion. *See Winner Enters., Ltd. v. Superior Court*, 159 Ariz. 106, 109, 765 P.2d 116, 119 (App. 1988). Not only did the juvenile court find Frances's motion untimely, but it also found that granting it would delay the resolution of Victoria's placement. We will uphold a juvenile court's discretionary decision on appeal when there is evidence to support it. *See Leslie C. v. Maricopa County Juv. Court*, 193 Ariz. 134, 135, 971 P.2d 181, 182 (App. 1997). In

[3]The Tribe has joined in ADES's answering brief on appeal.

ruling on a motion to intervene the court should consider "the stage to which the action has progressed before intervention is sought, and whether the applicant was in a position to seek intervention at an earlier stage of the proceedings." *State Farm Mut. Auto. Ins. Co. v. Paynter*, 118 Ariz. 470, 471, 577 P.2d 1089, 1090 (App. 1978).

¶11 Here, the court was presented with evidence that Victoria had lived with A. for most of her life and that Frances had known Victoria was the subject of a dependency proceeding since at least April 2009. Nevertheless, Frances had waited until September to file her motion to intervene, even though she knew the severance trial had been going on for three months. The court thus concluded that, although Frances did not intend to delay or prejudice the proceedings by moving to intervene, the granting of her motion would, in any event, delay a prompt resolution of the proceedings. *See Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 16, 995 P.2d 682, 685 (2000) (child's interests require prompt finality in termination of parental rights arising from abandonment). Based on the record and the court's ruling, we can infer the court found that Frances could have filed her motion earlier, and that the threshold requirements of Rule 24(b) had not been met. On the record before us, we find sufficient evidence to support the court's finding that Frances's motion was untimely and that granting it would result in prejudicial delay to Victoria.

¶12 Finally, despite Frances's argument to the contrary, ADES was not required to show that intervention was not in Victoria's best interests, nor was it necessary for the court to reach the *Bechtel* factors. *See Bechtel*, 150 Ariz. at 72, 722 P.2d at 240; *see also*

Allen, 214 Ariz. 361, ¶ 12, 153 P.3d at 386. Accordingly, because Frances has not sustained her burden of establishing the juvenile court abused its discretion by denying her motion to intervene, we affirm the court's denial of that motion. *See Allen*, 214 Ariz. 361, ¶ 9, 153 P.3d at 385.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Presiding Judge